IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Civil Revision No. 34 of 2007.

Date of Decision: 11th September, 2007

Baij Nath and others. **Petitioners.**

Versus

M/s Gainda Mull Hem Raj. **Respondent.**

Coram

The Hon'ble Mr. Justice V.K. Gupta, C.J.

Whether approved for reporting?[1] Yes.

For the petitioners: Mr. Bhupender Gupta, Senior Advocate with Mr. Neeraj Gupta, Advocate.

For the respondent: Mr. Vijay Pandit and Ms. Yogita Dutta, Advocates.

V.K. Gupta, C.J. (Oral).

An application filed by the petitioners herein under Section 4 of the Himachal Pradesh Urban Rent Control Act, 1987 (1987 Act for short) was allowed by the learned Rent Controller, Shimla vide a judgment passed by him on 18th March, 2005 whereby he determined the fair rent of the property in question at the rate of Rs.20/- per Sq. foot. Since the property in question comprises an area of 442 Sq. feet, the fair rent determined on that basis was calculated at Rs.8840/- per month which he decided was payable by the respondent to the petitioners from the date of

[1] Whether the reporters of Local Papers may be allowed to see the judgment?

filing of Section 4 petition i.e.9th July, 2002. Aggrieved, the respondent filed an appeal against the aforesaid judgment of the learned Rent Controller under Section 24 of 1987 Act. The learned Appellate Authority (II), Shimla vide the impugned judgment dated 21st February, 2007 while allowing the appeal of the respondent and setting aside the judgment dated 18th March, 2005 passed by the learned Rent Controller dismissed the petition filed by the petitioners under Section 4 of 1987 Act. The petitioners have now come up to this Court under Section 24 (5) of 1987 Act invoking this Court's revisional jurisdiction challenging the aforesaid judgment of the learned Appellate Authority.

The short ground which formed the basis of the learned Appellate Authority allowing the appeal filed by the respondent was that in accordance with the applicable statutory provision relating to the fixation of fair rent under 1987 Act, the petitioners-applicants had not adduced any evidence as to what was the prevailing rent in the locality for a similar building let out to a new tenant during the year 1971. The following observations in para 12 of the impugned judgment are apposite. I reproduce hereinbelow para 12 for ready reference, which reads thus:-

> "12. The above discussion suggests that in accordance with the provisions of Section 4 of the H.P. Urban Rent Control Act no evidence has been adduced by the petitioners. I may also point out that even the tenant has not contested the petition on these grounds and the ld. Rent Controller also failed to take note of this legal aspect of the case. However, I find that fair rent has to be determined in accordance with Section 4 of this Act and if it has not been so done, the Rent

Controller has no authority to determine the fair rent arbitrarily. I also find that there is no material on record suggesting as to how the ld. Rent Controller arrived at a conclusion that rent of the demised premises is at the rate of Rs.20/- per square feet."

Section 4 of 1987 Act reads thus:-

"Section 4. (1). The Controller shall, on application by the tenant or the landlord of a building or rented land, and after holding such enquiry as he may think fit, fix the fair rent for such a building or rented land.

(2) The fair rent under sub-section (1) shall be,-

(a) in respect of the building, the construction whereof was completed on or before the 25th day of January, 1971 or in respect of land let out before the said date, the rent prevailing in the locality for similar building or rented land let out to a new tenant during the year 1971; and

(b) in respect of the building, the construction whereof is completed after the 25th day of January, 1971 or in respect of land let out after the said date, the rent agreed upon between the landlord and the tenant preceding the date of the application, or where no rent has been agreed upon, the rent shall be determined on the basis of the rent prevailing in the locality for similar

building or rented land on the date of application.

(3) Notwithstanding that the fair rent for building or rented land has been fixed under the East Punjab Urban Rent Restriction Act, 1949 or under the Himachal Pradesh Urban Rent Control Act, 1971, a landlord or tenant of such a building or rented land shall be entitled to get its fair rent fixed under this section.

(4) Notwithstanding anything contained in this Act, the Controller may fix the fair rent on the basis of the compromise arrived at between the parties to the proceedings and such rent shall be binding only on the parties and their heirs.

(5) The fair rent fixed under this section shall be operative from the date, which the application is filed under this section."

In a Full Bench judgment of this Court in the case of **Surjit Singh** vs. **Pritam Singh**, reported in 1976 (8) R.C.R. 71, R.S. Pathak, C.J. (as he then was) observed as under:-

"18. The next point to consider is whether when fixing the fair rent the Controller is bound to follow the procedure and adopt the criteria set out in clauses (a) and (b) of sub-section (2) of Section 4 of the Act. It seems to me that he is bound to do so. The statute has imposed a duty on him to fix the fair rent upon enquiry made by him, and how that enquiry is to be made is indicated by clauses (a) and (b). In all cases where both clauses can be applied, the Controller has no option but to apply them. Where only clause (a) or clause (b) can be applied, it is that clause which must be applied. It is pointed out that there may be cases where neither clause (a) nor clause (b) can be applied. In an exceptional case it may be that the building in

> question is not matched by similar accommodation in the locality, but it will be a very rare case indeed where the building has not been shown in the property tax assessment register of the local body having jurisdiction in the area. In the event that neither clause (a) nor clause (b) can be applied, it is open to the Controller to adopt his own basis for fixing the fair rent. So long as that basis is reasonable, no fault can be found with it."

In a Single Bench judgment of this Court in the case of **Shri Hari Singh** vs. **M/s Amar Chand Butail and sons,** reported in 1994 (2) Sim.L.C. 393 V. Ratnam, C.J. (as he then was), while dealing with the scope and applicability of Section 4 of 1987 Act observed as under:-

> "2. In support of this revision petition, learned counsel for the petitioner first contended that the instances of the prevalent rent in the locality, as noticed by the appellate authority in paragraph 12 of its order, are all with reference to new buildings and that cannot, therefore, be adopted as a basis for fixation of fair rent in respect of the premises in the occupation of the petitioner. It is, however, not payable to accept this contention. Under section 4(2)(a) and (b) of the Act, the determination of the fair rent is with reference to a particular date line and not whether the building is new or old. Under section 4(2)(a) of the Act, which, it is not in dispute, is applicable to this case, all that is relevant is that the rent prevailing in the locality for similar building or rented land let out to new tenants during the year 1971 and not the condition of the building either as old or new. In view of this clear and specific provision

under section 4(2)(a) of the Act, this contention cannot be accepted."

Section 4 opens with the expression, "the Controller shall....." and goes on to lay down that an enquiry shall be held by him in such manner as he thinks fit for the purpose of fixing the fair rent for a building in question. Sub-section (2) of Section 4 then lays down that the fair rent which the Controller may fix under sub-section (1) shall be such as would be determined in accordance with the basis contained in either Clause (a) or Clause (b) thereof. Since admittedly the building in question in our case was constructed before 25th January, 1971, Clause (a) above is applicable and attracted in this case. In very unambiguous and clear terms Clause (a) lays down that the fair rent with respect to such a building construction whereof was completed before 25th January, 1971 shall be the rent prevailing in the locality for a similar building let out to a new tenant during the year 1971 (emphasis supplied). What is, therefore, of relevance is the letting out of a similar building to a new tenant during the year 1971. In other words, the only evidence relevant for determination and fixing of fair rent with respect to such a building is the evidence which shows as to how much was the rent paid or payable for a similar building let out to a new tenant during the year 1971.

If the aforesaid yardstick is applied, which undoubtedly alone is applicable in the present case, I have no hesitation in holding that the petitioners miserably failed to prove their case. The learned Rent Controller very very erroneously and

without at all bothering to either apply or invoke Section 4(2)(a) or even taking notice of this binding provision went ahead in fixing the fair rent on considerations which had admittedly no relevance or bearing to the aforesaid provision of law. On the other hand, the learned Appellate Authority very succinctly, by a very close examination and proper application of Section 4(2)(a) with reference to the evidence adduced by the petitioners very correctly rejected the petitioners' contention because he had no doubt in his mind that no evidence was led by the petitioners in support of their claim for fixing fair rent in accordance with Section 4(2)(a) (supra).

Mr. Bhupender Gupta, learned Senior Counsel appearing for the petitioners drew my attention to the statement of PW-1 Baij Nath recorded by the learned Rent Controller on 27th December, 2002. In this statement, PW-1 stated that a similar building as is occupied by the respondent, comprising almost same area, if let out in the year 1971 would fetch Rs.900/- per month as the rent. This was a bald testimony of the petitioners through their witness PW-1 who is petitioner No.1 himself. No material facts or material particulars were mentioned, stated or given even in this bald statement about the tenant or tenants, whether new or old who in the year 1971 would have given or offered the rent of Rs.900/- per month for a similar building. This apart, no supporting or corroboratory evidence was adduced by the petitioners which would indicate or establish that a new tenant or new tenants would be giving or offering Rs.900/- per month as rent in the year 1971 with respect to a similar building. I have no hesitation in holding that the claim of the petitioners (indirectly

indicated) in the aforesaid statement of PW-1 about the fair rent being Rs.900/- per month was also not properly established.

For the aforesaid reasons, this petition is dismissed. The judgment of the learned Appellate Authority impugned in this petition is upheld. There shall be, however, no order as to costs.

11th September, 2007. (V.K. Gupta), C.J.
(tr)